

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**JOHN H. JACKSON, III  
and KEITH HAYDEN,**

**Plaintiffs,**

**v**

**ALLEGHENY LUDLUM CORPORATION ,  
Defendant.**

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**2:10-cv-182**

**ORDER OF COURT**

Pending before the Court is PLAINTIFFS' STIPULATION OF DISMISSAL WITH PREJUDICE (Document No. 40). Plaintiffs have submitted a proposed Order which requests that the case be dismissed with prejudice, with each party to bear its own costs. Defendant has filed a response in opposition (Document No. 41), Plaintiffs have filed a reply (Document No. 42), and the matter is ripe for disposition.

Pursuant to Fed. R. Civ. P. 41(a)(1), a plaintiff may voluntarily dismiss a case without a court order only if: (1) the notice of dismissal is filed before the opposing party serves either an answer or a motion for summary judgment; or (2) "a stipulation of dismissal is signed by all parties who have appeared." Neither condition has been met in this case. Defendant Allegheny Ludlum Corporation has filed a motion for summary judgment and vigorously opposes dismissal on Plaintiffs' proposed terms. Defendant seeks a ruling on its pending summary judgment motion.

Pursuant to Fed. R. Civ. P. 41(a)(2), this case may be dismissed at the request of a plaintiff "only by court order, on terms that the court considers proper." Plaintiff has not sought leave of Court to dismiss this case, and the parties have not developed or presented their respective

positions as to the proper terms, if any.

In accordance with the foregoing, PLAINTIFFS' STIPULATION OF DISMISSAL WITH PREJUDICE (Document No. 40) does not comply with the applicable rules of civil procedure and is hereby **DENIED**.

SO ORDERED this 12<sup>th</sup> day of January, 2011.

BY THE COURT:

s/ Terrence F. McVerry  
United States District Court Judge

cc: Joseph H. Chivers, Esquire  
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